



November 9, 2017

Chief Kathleen M. O'Toole  
Seattle Police Department  
PO Box 34986  
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (2017OPA-0172)

Dear Chief O'Toole:

OPA investigated an allegation that several SPD employees may have engaged in an out of policy pursuit. During the course of this investigation, several issues concerning the Department's pursuit policy were raised and, in OPA's opinion, suggested a need to further revise and clarify this policy. These issues are discussed in turn below.

**A. Prior Management Action Recommendations Regarding SPD's Pursuit Policy**

The Management Action Recommendation (MAR) made herein echoes, in part, a prior recommendation made by OPA on September 21, 2016. Specifically, in the context of case number 2016OPA-0214, OPA raised concerns regarding the practical application of SPD's pursuit policy. OPA recommended that SPD modify the policy to make it clear that all pursuits, including those in which an officer fails to activate emergency lights and siren as required, are subject to the same prudent restrictions and regulations.

SPD responded to this MAR on October 21, 2016, and indicated their agreement that the policy's definition of "pursuit" could be subject to misinterpretation. SPD committed to taking various steps, including having the Audit, Policy, and Professional Standards Section revisit the policy and its definitions to determine what clarifications may be appropriate given both the concern OPA raised and the statute on which the policy is based. Based on OPA's understanding, SPD still actively evaluating and considering modifications to this policy.

**B. Unmarked Vehicles Without Emergency Equipment Engaging In Pursuits**

SPD Policy 13.031-POL-1 defines a pursuit as "when an officer, operating a police vehicle with emergency lights and siren activated, proceeds in an effort to keep pace with and/or immediately apprehend an eluding driver." SPD Policy 13.031-POL-2 further requires that "officers engaged in a pursuit shall drive with due regard for the safety of all persons, and will use both emergency lights and continuous siren."

One of the named employees in this case was a plainclothes detective who, on the date in question, was driving an unmarked vehicle that did not have emergency lights and siren. The named employee, as well as other uniformed officers, engaged in a pursuit. However, during OPA's

investigation, this employee contended that as he was in an unmarked vehicle without emergency equipment, he could not have been in a pursuit as it was defined under the policy. The argument appears to have been that since the policy defines a pursuit as involving an officer operating a police vehicle with emergency lights and siren activated, an officer driving an unmarked car with no emergency equipment could not engage in a pursuit. This was the case even though, based on OPA's analysis, the detective's actions were in all other respects consistent with engaging in a pursuit.

Such an interpretation of the policy is, in OPA's opinion, contrary to its intent and purpose. Vehicles involved in a pursuit are required to use emergency equipment based on the potential danger to the community, as well as to the officers themselves. Given this rationale, it should be clear that vehicles that are not equipped with emergency equipment should never engage in pursuits due to the safety risks inherent in such conduct. I read the policy to cover all Department vehicles engaged in pursuits – there should be no exception for an unmarked car simply because it has no emergency equipment.

Accordingly, OPA suggests that the Department clarify its pursuit policy to explicitly prohibit unmarked vehicles that do not have emergency equipment from engaging in pursuits or from engaging in vehicle operations consistent with engaging in a pursuit. Moreover, even for unmarked vehicles that do have emergency equipment, the Department should consider adding guidance concerning when it is appropriate for such vehicles to engage in a pursuit. Lastly, OPA requests that the policy be clarified to instruct that officers who engage in a pursuit while driving an unmarked vehicle are also required to complete Blue Team Vehicle Pursuit entries.

### **C. Crimes For Which Officers May Pursue**

SPD Policy 13.031-POL-3 explains when a pursuit is justified. The policy further states that "[o]fficers will not pursue solely for any of the following: Traffic violations/Civil infractions; Misdemeanors; Gross misdemeanors; Property crimes; the act of eluding alone."

During OPA's investigation, officers expressed confusion regarding this portion of the policy. While officers understood that they could not pursue if the only suspected crime was within the list identified above, they were less clear on whether they could pursue if two or more of these crimes were suspected.

From a reading of the plain language of the policy, I understand the officers' confusion. I agree that the policy is unclear as to whether officers could pursue a subject who committed a combination of the listed crimes, rather than just one, and believe that the policy could be clarified in this regard.

If it is the Department's intention to preclude officers from engaging in a pursuit even if two or more of the crimes identified in the policy are suspected, the language of the policy should be modified accordingly. SPD could consider the following modification: "Officers will not pursue solely for any one *or a combination* of the following..." (new language in italics).

Thank you very much for your prompt attention to this matter of public trust and confidence in the professional conduct of SPD and its employees. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

Please also feel free to contact me with any questions or concerns.

Sincerely,



Andrew Myerberg  
Interim Director, Office of Police Accountability

cc: Assistant Chief Lesley Corder, Standards and Compliance, Seattle Police Department  
Rebecca Boatright, Senior Police Counsel, Seattle Police Department  
Fe Lopez, Executive Director, Community Police Commission  
Tito Rodriguez, OPA Auditor  
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